

OPEN ENROLLMENT POLICY

Admission of Non-resident Students/Assignment of Resident Students

In all cases, the most current South Dakota rules will apply.

This policy is enacted to fairly allow admission and assignment of both resident and non-resident students in the Howard School District. For the purpose of this policy, the term "resident district" means the district in which a student has legal residence as determined by SDCL 13-28-9. The term "non-resident district" means any district in which a non-resident student seeks to enroll.

The board will accept all students from other districts wishing to enroll, provided the non-resident district's facilities can accommodate the students without adversely affecting the quality of the educational program. This determination will be based upon criteria adopted by the board, (see Section C below) and is subject to the following conditions:

A. General Principles

1. A student, who is a legal resident of another South Dakota district seeking to transfer to the Howard District, must make application to both the resident and non-resident district. The application must be on triplicate forms provided by the Department of Education and Cultural Affairs. The application must be made by an unemancipated student's parent or guardian or by the emancipated student (The parent with the authority to request enrollment is the resident custodial parent).
2. The application will be approved or disapproved if the transfer does not result in an inability to provide a quality educational program by the Howard school board and the applicant and the resident district must be notified of the decision within five (5) working days of the decision. Applications will be reviewed in the order received.
 - a. The application may be withdrawn by the applicant before approval by the affected school boards.
 - b. Once approved by the Howard district, the applicant's intent to enroll obligates the student to attend school in the receiving district unless the two boards agree in writing to allow a student to return to the original district or if the parent, guardian or student changes residence to another district. (NOTE: The Act contemplates a change of residence not being made by an unemancipated minor, It is recommended that the school attorney be consulted before final action is taken denying a minor student's ability to establish residence separate and apart from parents and guardians).
 - c. If a bona fide change of residence occurs, the parents, guardian or emancipated student may apply for enrollment in the Howard District.
3. Once enrolled in the Howard School District, the enrollment will continue unless a bona fide change of residence occurs or a subsequent transfer application is received. The student does not have to resubmit an application each year.
4. The Howard district will accept credits granted for any course successfully completed in another accredited district. The Howard district may award a diploma to a non-resident only if the student satisfactorily meets Howard district's graduation requirements. (NOTE: If, upon review of an application and a student's transcript, it would appear that the student seeking transfer could not satisfy graduation requirements in the Howard district in the same time frame as the student's class/age peers, the applicant should be notified that additional school attendance will be required in order to receive a diploma).
5. Transportation of non-resident students to school is the responsibility of the applicant. Both the resident and non-resident districts may provide transportation to non-resident students if approved. (NOTE: Legal principles of equal protection very likely require the district to provide transportation to all or none of the non-resident students consistent with the grade levels for which transportation is provided for resident students).

B. Special Education Students

Both state and federal law require that the resident district be responsible for providing a free and appropriate public education for students in need of special education and related services. All applications for transfer of a special education student will first be considered by a placement committee, which will include parents of the student and staff from the Howard School District. In addition to the other considerations of the 1997 Open Enrollment Act, the following additional considerations will apply:

1. The placement committee will determine that whether Howard School District can provide appropriate instructional programs and facilities to meet the student's needs.
2. The resident district will reimburse the Howard School District the "actual costs incurred in providing an appropriate special education".
3. The placement committee shall determine whether the student requires transportation as a related service and if the service is required, the resident district will be required to provide or pay for the service.
4. Return of the non-resident special education student to resident district will be subject to the approval of the placement committee.
5. No separate dates will be in effect for notification and decision-making with respect to special education students.

C. Criteria for Making Transfer Determinations

The standards will be available to any individual so requesting. Discrimination based upon, race, gender, religious affiliation or disability is prohibited. All members of the same family residing in the same household will be treated the same.

1. The standards will be established based on the capacities of each of the following elements within the district in any approvals:
 - a. Programs
 - b. Classes
 - c. Grade levels
 - d. Buildings

(NOTE: The word "capacities" applies to physical characteristics of the element. In addition, a pupil/teacher ratio for each of the elements identified above will be established and may change from year to year. Consider all ramifications of the standards, including their possible effect on collective bargaining agreements).

2. The Department of Education and Cultural Affairs has authority to promulgate rules setting forth procedural and administrative requirements of the open enrollment program. The school district will follow any and all such rules and procedures.

(NOTE: As of June 1997, no rules have been proposed).

3. The board may deny any applications for any of the following reasons:
 - e. The application was not timely.
 - f. The standards established in paragraph C-1 above are violated.
 - c. The applicant is under suspension or expulsion.

(NOTE: SDCL 13-32-4.3 provides that a student under suspension or expulsion "may not be transferred to another school district until the suspension or expulsion has expired". It is unclear whether this requirement applies at the time an application is made or at the time the actual school attendance is to begin).

- d. The applicant has been convicted of possession, use or distribution of any controlled substance, including marijuana, and is under suspension pursuant to SDCL 13-32-43.
- e. The applicant has been convicted of a weapons charge relating to the schools and is under suspension pursuant to SDCL 13-32-43.
- f. If a student enters under false pretense pertaining to C-3-c, d or e, the student may immediately be dismissed from the school. Failure to disclose any information related to C-3-c, d or e will be considered false pretense.

D. Miscellaneous Provisions

1. The board will assign all students among the schools within the district, pursuant to SDCL ch. 13-28.
2. The district will make relevant information about the district, schools, programs, policies and procedure available to all interested people.
3. Appeals from board action under the 1997 Open Enrollment Act can be made under SDCL ch. 13-46 and the court will conduct a de novo review. The time for appeal under SDCL ch 13-46 is within ninety days from the date of decision.

(NOTE: Our Supreme Court has previously stated with respect to court review of actions under SDCL ch.13-46 that the provision for de novo [a legal phrase meaning “to make a new decision”] is not a true de novo review, since the courts may not substitute their judgment for the decisions of the school board due to constitutional considerations of the separation of power).

LEGAL REFS: SDCL 13-13-10-1, 13-15-8.1 through 13-15-9; 13-15-11, 13-15-21, 13-15-21.1; 13-15-23 through 13-15-24; 13-28-9; 13-28-10 through 13-28-11; 13-28-19; 13-28-19-1; 13-28-21; 13-28-30; 13-28-34; 13-28-40 through 13-28-47; 13-32-4.3; 13-37-35; 13-46 repealed July 1, 1998; 13-28-20; 13-28-22; 13-28-23; 13-28-38

CROSS REFS: IGBA, Programs for Handicapped Students, LB Relations with Other Schools and School Districts

Adopted by Board 8-11-97

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